

## **Sec. 50-41. Enforcement.**

(a) *Definitions.* In this section, these terms have the following meanings:

(1) *Citation.* A document noting a violation of a Planning Board Action, seeking to impose a civil fine or penalty.

(2) *Civil Fine or Penalty.* A requirement to pay a predetermined monetary sum upon the issuance of a citation for violating a Planning Board Action.

(3) *Enforcement Agent.* The Planning Board, or designee responsible for determining compliance with terms, conditions, requirements, agreements, and any other obligations or limitations associated with a Planning Board Action.

(4) *Person.* An individual, partnership, corporation, organization, or other entity, or combination thereof, whether singular or plural that owns property or otherwise has an interest or responsibility for property that was the subject of a Planning Board Action.

(5) *Planning Board Action.* A final decision, on a preliminary plan, site plan, project plan, supplementary plan, water quality plan or other plan, including all associated terms, conditions, requirements and other obligations or limitations made by the Planning Board pursuant to its authority under Article 28, Titles 7 and 8, Maryland Code Annotated and Chapters 50 and 59 of the Montgomery County Code including any regulations promulgated pursuant to this authority. A final decision for purposes of this section does not include a decision made by the Planning Board pursuant to Chapter 22A.

(6) *Stop Work Order or Corrective Order.* An administrative order issued by an Enforcement Agent or the Planning Board requiring a person to discontinue any further development, construction or other land disturbance activity authorized by a Planning Board Action until a violation has been corrected.

(b) *Citation; Civil Fine or Penalty.*

(1) The Enforcement Agent may deliver a citation to a person believed to be in violation of a Planning Board Action. The Planning Board will retain a copy of the citation. The citation must include a certification by the Enforcement Agent attesting to the truth of the matters set forth in the citation.

(2) The citation must contain at least the following information:

- a. The name and address of the person charged;
- b. The nature of the violation;
- c. The place where and the approximate time that the violation occurred;
- d. The amount of the fine assessed;
- e. The manner, location, and time in which the fine may be paid and the party to whom the fine should be paid;
- f. The date by which the payment must be made; and
- g. A statement advising the person of the right to elect to stand trial for the violation.

The Planning Board may utilize any citation consistent with this Section, including the State of Maryland Uniform Civil Citation form.

(c) *Imposition of Civil Fines and Penalties.*

(1) A citation may require the payment of a civil fine or penalty for the alleged violation of the Planning Board Action.

(2) The maximum amount of the fine for each violation of a Planning Board Action is set at \$500.00 for each day that the violation has occurred.

(3) Each day that the violation has not been corrected shall be considered a separate violation and the applicable fine or penalty will continue to accrue each day until corrected, without the need of issuing a new citation each day.

(d) *Request for District Court Review.*

(1) A person who receives a citation imposing a civil fine or penalty may elect to stand trial for the offense by filing with the Planning Board a notice of intention to stand trial. The notice of intention must be given to the Chairman of the Montgomery County Planning Board no less than 5 days before the date that the payment is due as established on the citation.

(2) Upon receipt of the notice of intention to stand trial, the Planning Board will forward to the District Court having venue a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the District Court will schedule the case for trial and notify the defendant of the trial date.

(3) All fines, penalties, or forfeitures collected by the Planning Board or District Court for the violations will be remitted to the Planning Board, placed in the general funds of the Maryland-National Capital Park and Planning Commission and may be utilized by the Commission for project corrections, plan enforcement or other Commission purposes. The Commission, in its sole discretion, may utilize collected fines or penalties to perform or correct some or all of the violations noted in the citation, without obligating the Commission to undertake project corrections in lieu of the developer.

(e) *Failure to Pay Fine or Penalty.*

(1) If a person who receives a citation for a violation, does not timely pay the fine by the payment due date as established in the citation and fails to file a notice of intention to stand trial, a formal notice of the violation shall be sent to the person's last known address. If the citation is not satisfied within 15 days from the date of the notice, the person is liable for an additional fine not to exceed twice the original fine.

(2) If, after 35 days, the citation is not satisfied, the Planning Board may request adjudication of the case through the District Court. The District Court will schedule the case for trial and summon the defendant to appear.

(f) *Prosecution by the Office of the General Counsel.* The Office of the General Counsel for the Maryland-National Capital Park and Planning Commission will prosecute a violation under this section.

(g) *Conduct of Hearing.* Proceedings before the District Court will be conducted in such manner as provided in Article 23A, Sections 3(b)(8) through (15) of the Maryland Code Annotated.

(h) *Payment of Court Costs.* A person found by the District Court to be in violation of a Planning Board Action will pay the costs of the proceedings in the District Court.

(i) *Issuance of Stop Work Orders or Corrective Orders.*

(1) In addition to the authority to impose civil fines and penalties, in instances where the Enforcement Agent reasonably determines that:

a. a person is in violation of any element of a Planning Board Action, and

b. the public health, safety, or welfare are threatened or may be threatened because of the violation; then Enforcement Agent may also issue a stop work order or corrective order.

(2) An order must include the following information as may be applicable:

a. The name and address of the person charged;

b. The nature of the violation;

c. The place where and the approximate time that the violation occurred;

d. A clear statement indicating the action that must be taken or discontinued to cure the violation including the requirement to prepare a plan of compliance; and

e. The date, approximate time, and location for the Planning Board hearing to review the order.

The order must include a certification by the Enforcement Agent attesting to the truth of the matters set forth in the order.

(3) The Enforcement Agent must prominently display the order in close proximity to the location where the violation has occurred. In addition, the Enforcement Agent may deliver or mail, as practical, a copy of the order to the last known address of the person that secured approval of the Planning Board Action.

(4) When an order has been posted, the recipient must immediately discontinue any further development or construction activities authorized in accordance with the Planning Board Action until such time as the order is rescinded. An order posted by the Enforcement Agent has the effect of suspending the entire underlying Planning Board plan approval, unless:

a. the Planning Board in its consideration of the Planning Board Action approved phasing for the project; and

b. the Enforcement Agent determines that the violation only relates to either:

(i) a certain phase or phases of the project but not other phases of the same project; or

(ii) activities on a single lot or parcel.

In these instances, the order may only suspend the Planning Board's approval as it relates to those phases or lots determined to be in violation.

(5) Upon posting an order, the Enforcement Agent will schedule a review hearing with the Planning Board at the Board's next available regular session. In the event that a hearing before the Planning Board is not practical in a reasonable period of time as determined by the Enforcement Agent the matter may be reviewed by the Chairman of the Planning Board or Vice-Chair. A determination by the Chair or Vice-Chair will have the same effect as if the Board

acted under this section. The Planning Board or Chairman, if applicable, will hear the case *de novo*. In the event the violation is corrected and a plan of compliance prepared by the person prior to the hearing as confirmed by the Enforcement Agent, the hearing will be cancelled.

(6) At the Planning Board hearing, the Enforcement Agent will indicate to the Board the grounds and reasoning for issuing the order. The recipient must state all grounds concerning why the order should be discontinued and may propose a plan of compliance indicating how and when the violations will be corrected. The Planning Board will determine if the order should be continued, modified, or rescinded and if a plan of compliance should be approved. The Board's determination that the order should continue has the effect of revoking the underlying Planning Board approvals for the entire project or portions of the project as determined by the Board until such time as the violation is corrected.

(7) An appeal of a decision of the Planning Board not to modify or rescind an order will be administered as an administrative appeal filed with the circuit court, not as a municipal infraction. The Board of Appeals does not have jurisdiction to review an administrative appeal arising from a decision of the Planning Board.

(8) An order will be rescinded when the Planning Board or Enforcement Agent determines that the violation has been satisfactorily corrected, which determination should not be unreasonably withheld.

(j) *Other Remedies.* The authority to issue civil fines, penalties, and impose stop work orders are in addition to any other rights or authority of the Planning Board to enforce its actions, including injunctive, declaratory, or other relief. The election to pursue one remedy does not preclude the Planning Board from pursuing such other available remedies as the Board deems appropriate.

(k) *Exclusive Authority.* The Planning Board or its designee has exclusive authority to enforce violations of a Planning Board Action. The authority granted in this Chapter supersedes any authority for enforcing Planning Board Actions that may have been granted to the Planning Board or any other officer, agent, or agency of Montgomery County or the State of Maryland in Chapter 1 of the Code. (Ord. No. 12-74, § 1.)

**Sec. 59-D-3.6. Failure to comply.**

If the Planning Board finds, for any plan approved under this section, on its own motion or after a complaint is filed with the Planning Board or the Department, that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board, after due notice to all parties concerned and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan. If at the end of the term of the plan of compliance sufficient corrective action has not taken place to cause compliance, the Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50. The Planning Board may request and obtain investigations and reports as to compliance from appropriate County or State agencies.

Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use-and-occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.

(Legislative History: Ord. No. 9-39, § 1; Ord. No. 12-73, § 2; Ord. No. 13-35, § 1; Ord. No. 13-112, §1; Ord. No. 14-36, § 1; Ord. No. 14-49, § 1.)